

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

Jason Hanson, & Dakota Metal Fabrication,)
312 3rd Street, PO Box 66, Manvel,)
North Dakota 58256,)

Plaintiffs,)

v.)

James Parisien, Director of the Turtle)
Mountain Band of Chippewa Indians)
Tribal Employment Rights Ordinance)
(TERO), The TERO Office, the Turtle)
Mountain Band of Chippewa Indians)
(Tribe), Turtle Mountain Tribal Court,)
And the Tribal Appellate Court,)

Defendants.)

Civ. Action No. 3:22-cv-174

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' OPPOSITION
TO MOTION FOR
DEFAULT JUDGMENT**

Plaintiffs file their Response to Defendants' Opposition to Motion for Default Judgment.

BACKGROUND

Plaintiffs incorporate all of the facts alleged in the complaint and all subsequent motions, memorandums, legal discussions, responses and replies, as though the alleged facts were first alleged here.

Defendants, in their Tribal Defendants' Opposition to Motion for Default Judgment, assert or argue that "Plaintiffs Motion for Default Judgment is both procedurally and substantially meritless." Defendants cite the Federal Rules Civil Procedure 55 as Plaintiffs' failure to make application for a default judgment with the clerk of court. Plaintiffs filed a motion for default judgment. Defendants argue Plaintiffs were suppose to make an "application"

to the clerk of court for a default judgment. Part of Rule 55 is as follows:

Rule 55. Default; Default Judgment

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) Entering a Default Judgment.

(1) By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) By the Court. In all other cases, the party must **apply** to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

Emphasis added. There is no special format suggested in Rule 55. Plaintiffs' motion for default judgment is an application for default judgment, whether the clerk of court takes action or if the Court takes action. Instead of filing an answer, Defendants filed a motion to dismiss. Plaintiffs made their "application" for default judgment by way of a motion. It seems the old adage "What is good for the goose is good for the gander," is applicable here.

DISCUSSION

Rule 12 cited by Defendants provides in subsection (b) provides in part as follows:

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

Defendants only argued two (2) defenses in their Tribal Defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss, on page 5, 2d. Paragraph, where Defendants state

the following:

Defendants now respectfully move to dismiss this action on the following grounds:

1. This Court lacks jurisdiction as to the Tribe and Tribal Agency Defendants because Plaintiffs have not pled a waiver of sovereign immunity.
2. The Complaint fails to state a claim upon which relief can be granted.

As stated supra, Rule 12 (b) provides the list of defenses that must be made in any responsive filing.

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

Defendants listed (1) and (6). Defendants have not used the remaining defenses. Plaintiffs alleged in the Complaint that the Court has subject matter jurisdiction. Plaintiffs already addressed defense # (6) in their Plaintiffs' Response to Defendants' Motion to Dismiss.

In addition, Defendants failed to deny the following paragraphs in Plaintiffs' Complaint: 18, 19, 21, 23, 24, 25, 27, and 1.b. in the Wherefore clause. Defendants' failure to deny these paragraphs, are admissions that these paragraphs are true and correct pursuant to Rule 12. Plaintiffs continue to rely on the legal argument made at the bottom of page 2 of the Plaintiffs' Memorandum to Support a Motion for Default Judgment.

CONCLUSION

Defendants are attempting to read into Rule 55 requirements that simply are not there. Plaintiffs made their application for a default judgment through their motion. Defendants failed to file an answer, denying Plaintiffs' allegations, and failed to set forth their defenses. For the

reasons argued *supra*, Plaintiffs respectfully request that the Court grant their Motion for default judgment.

December 29, 2022.

ATTORNEY FOR PLAINTIFFS:

/s/Don Bruce (electronic signature)

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PROOF OF SERVICE

Defendants' attorney will be served through the electronic system when this document is filed with the Court.